

SENATE, NO. 2388

The Commonwealth of Massachusetts



IN THE YEAR OF TWO THOUSAND AND SEVEN

AN ACT PROTECTING THE NATURAL AND HISTORIC RESOURCES OF THE COMMONWEALTH

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 132B the
2 following chapter:-

3 CHAPTER 132C. PUBLIC LANDS PRESERVATION ACT.

4 Section 1. It is hereby declared to be the policy of the commonwealth that lands or easements
5 taken or acquired for natural resource purposes, consistent with Article 97, are a vital and
6 indispensable public natural and historic resource and, therefore, that there shall be no net loss
7 of lands or easements taken or acquired for public natural resource purposes as a result of any
8 disposition or change in use of these lands.

9 Section 2. Definitions: As used in this chapter, the following words shall have the following
10 meanings: -

11 “Alternatives analysis”: a description of alternatives to the disposition or change in use of lands
12 or easements protected under Article 97, including but not limited to (a) an analysis of at least
13 the most reasonable alternative (other than the no-action alternative) that does not require a
14 disposition or change in use under Article 97, including costs and environmental impact; and (b)
15 whether the alternative(s) are economically feasible for the owner.

16 “Article 97”: Article XLIX, as appearing in Article XCVII, of the Amendments to the
17 Constitution.

18 “Change in use” or “used for other purposes”: diversion of lands or easements, or portion
19 thereof, protected under Article 97 from existing use.

20 “Disposition” or “disposed”: the transfer of physical or legal custody or control of lands or
21 easements, or a portion thereof, by conveyance, taking by eminent domain, lease for any term,
22 granting or taking of interests in land or easements, or any other means of transfer or change of
23 legal or physical control, regardless of whether the transfer is for the same or different uses, or
24 for consistent or inconsistent purposes.

25 “Lands or easements”: lands; easements; conservation restrictions, preservation restrictions,
26 agricultural restrictions, and watershed preservation restrictions, as defined in section 31 of
27 chapter 184; and other restrictions or conditions contained in a deed, grant or other instrument
28 purporting to transfer or convey an interest in land, regardless of the term of such easements,
29 restrictions or conditions.

30 “Natural resource purposes”: the purposes described in Article 97.

31 “Owner”: the agency, authority, public instrumentality, town, municipality or political

32 subdivision that owns or has care, custody or control of the lands or easements for which there
33 is a proposed disposition or change in use.

34 “Replacement land”: lands or easements acquired by the owner that are comparable in area and
35 fair market value as compared with the Article 97 lands or easements being disposed of or used
36 for other purposes, and of comparable location and use. Lands or easements already covered by
37 Article 97 shall not qualify as replacement land.

38 “Taken or acquired”: obtained by gift, purchase, devise, grant, exchange, lease, taking by
39 eminent domain or otherwise by the commonwealth, any of its political subdivisions or bodies
40 politic, or any instrumentality thereof, or through use of public funds, including so called land
41 bank funds.

42 Section 3. It shall be the policy of the General Court not to enact legislation to allow a
43 disposition or change in use of lands or easements acquired for natural resource purposes under
44 Article 97, unless the owner of the lands or easements provides the General Court with the
45 following:-

46 (a) a statement from the secretary of environmental affairs as to whether the lands or easements
47 are classified as Article 97 land;

48 (b) a metes and bounds description of the lands or easements, a copy of the deed into the
49 present owners and a statement of the market value, as defined in United States Code of Federal
50 Regulations (12CFR323.2(g)), of the lands or easements, substantiated by an appraisal, as
51 defined in United States Code of Federal Regulations (12CFR323.2(a)), meeting minimum
52 appraisal standards, as defined in United States Code of Federal Regulations (12CFR323.4), and

53 prepared by a state certified appraiser or state licensed appraiser, as defined in United States
54 Code of Federal Regulations (12CFR323.2(j)(k));

55 (c) copies of statutorily required approvals by the governing body or officer of the owner
56 approving disposition or change in use of the subject lands or easements and acquisition of
57 replacement land, including, if applicable, copies of required approvals by the local
58 conservation commission, which shall have been obtained prior to approval by the governing
59 body or officer;

60 (d) an alternatives analysis approved by the secretary of environmental affairs;

61 (e) a signed offer, signed purchase and sale agreement, fully executed lease, deed or other legal
62 documents for the replacement land, a metes and bounds description of the replacement land
63 and a statement of the market value, as defined in United States Code of Federal Regulations
64 (12CFR323.2(g)), of the lands or easements, substantiated by an appraisal, as defined in United
65 States Code of Federal Regulations (12CFR323.2(a)), meeting minimum appraisal standards, of
66 Federal Regulations (12CFR323.4), and prepared by a state certified appraiser or state licensed
67 appraiser, as defined in United States Code of Federal Regulations (12CFR323.2(j)(k));

68 (f) a letter from the secretary of environmental affairs, approving the replacement land.

69 Section 4. Within six months of the passage of this act, the secretary of environmental affairs
70 shall develop and publish for public review and comment guidelines for conducting an
71 alternatives analysis and identifying replacement land and within one year of passage of this act
72 shall publish such guidelines in final form.

73 Section 5. The joint committee on bonding, capital expenditures and state assets and the
74 committee on municipalities and regional government shall each file a report by August 30 of
75 the second year of each legislative session with the clerks of the senate and house of
76 representatives detailing their activities on all bills referred to them that involve dispositions or
77 changes in use of lands or easements taken or acquired for natural resources purposes under
78 Article 97.

79 Section 6. The commonwealth or agency, authority, or instrumentality thereof shall notify the
80 public 30 days prior to filing a bill to dispose or change the use of any Article 97 land or
81 easement.